

ALLOWING SOLDIERS TO VOTE.

MR. BAILEY'S SPEECH

ON THE

Bill to extend the Elective Franchise to the Soldiers of this
State in the Service of the United States.

In Senate, April 1, 1863.

I voted for this bill in Committee, and shall do so again here. Its simple and only object is to secure to about two hundred thousand of our citizens, constituting very nearly one-third of the voters of the State, the exercise of the elective franchise. The men whose rights we seek to maintain, are the flower of our population — the defenders of our liberties and of our country. To them is committed the herculean task of putting down this gigantic rebellion. In the performance of this patriotic duty, their lives are placed in constant jeopardy. Whether they shall survive the struggle or not — whether they shall return vanquished or victorious — whether the cause for which they fight shall triumph or be lost, depends almost entirely upon the action of the State and National authorities. If sustained promptly and effectually, their hardships and dangers will be diminished, and their arms victorious. Their interest, therefore, in the elections which determine our public policy, is deeper and more absorbing than ours. To deny the exercise of the elective franchise to such a vast body of our citizens, at such a time, and under such circumstances, unless by reason of an inexorable necessity, is most unjust. Nay more, I say that such an act is a high-handed tyranny, overshadowing and overwhelming by its magnitude the isolated instances of military arrests, over which so much indignant eloquence has been poured. *Finesse* as you will, the naked fact is, you disfranchise nearly one-third of the legal voters of this State. You do it by refusing to remove a technical difficulty which now stands in the way of their voting — a technicality created by the Legislature, and which it can repeal or modify at its pleasure.

I am relieved to know that the other side do not oppose this bill from any fear that the vote of the soldiers would injure their political prospects. They solemnly declare it to be their deliberate conviction that two-thirds of the soldiers would vote the Democratic ticket if they could only get a chance. Their objection, they assure us, is not that the Administration would thus gain votes, but that the bill is unconstitutional. They know that they would secure an overwhelming majority by means of this bill, but they cannot accept it, because the organic law prohibits such a measure.

"'Tis true, 'tis pity, and pity 'tis, 'tis true."

They quote section one, article two of the Constitution. The particular provision upon which most stress is laid, is the one substantially saying that citizens entitled to vote must vote in the election district of which they shall, for the time, be residents, and not elsewhere. It is insisted that this language necessarily requires the voter to be personally present in the district when he votes, and to deposit his ballot with his own hand.

It is conceded that the soldiers do not lose their residence by absence in the army. Section three of the same article expressly declares this.

If these soldiers then appear at the polls of their respective districts on election day, though they may have been years absent in the army, their ballots must be received. So much is admitted. The only question remaining is, whether they may not vote in their respective districts here in the State, by sending their ballots to be deposited in such districts, in a manner to be prescribed by law? I think they may. I think the Constitution does not forbid this. I concede that it does not expressly authorize it. The framers of that instrument never imagined the possibility of such a civil war, and framed no provisions with reference to it. But have they anywhere in the Constitution forbidden the Legislature from enacting a law to enable soldiers engaged in another part of the country in putting down a rebellion, to send their ballots to be deposited and counted in their respective election districts at home? For I confidently affirm that the Legislature may authorize this to be done, unless the Constitution expressly forbids it. In other words, it is not necessary to find an express warrant for it in the Constitution; it is sufficient that the Constitution does not prohibit it. It must be borne in mind that an entirely different rule applies to the State Constitution from

that which applies to the Constitution of the United States. The General Government has no other powers than those expressly named in the Federal Constitution, or necessarily implied from its actual provisions—whereas this body has supreme power of legislation upon all subjects of internal policy, unless actually forbidden by our Constitution. The Federal Constitution is an instrument conferring powers—the State Constitution is one curtailing powers. It follows, therefore, that the Legislature is supreme upon the question before us, unless its power over it is taken away by the Constitution. I say that it is not. The provisions quoted do not warrant this.

What does this bill propose to do? In substance to permit the soldiers in the field to vote. Where? In Virginia or Tennessee? No, sir—not at all—but in their respective election districts here at home.

It provides that he shall vote in his own election district in the State of New York and nowhere else. True, it allows him to send his ballot to be deposited in that district, instead of appearing in person and depositing it with his own hand. And, Sir, does the section of the Constitution referred to prohibit this? That provision declares that he shall vote in his own district and nowhere else. It does not say that he must necessarily deposit this ballot with his own hand. Now, Sir, the soldier, under this bill, will vote in his own district and nowhere else. No man can be said to have voted under any law until all which that law requires him to do, and all which the persons appointed to receive his ballot are required to do in the way of receiving it, has been actually done. To illustrate: A ballot may be ordered for some purpose in this Senate. The clerk, I will suppose, is directed to receive the ballots and Senators are permitted to send them up from their seats by a messenger. Now, Sir, I shall not have voted, under such an order, when I have prepared my ballot and given it to a messenger to be carried to the clerk. I shall not have voted until the messenger has actually delivered the ballot to the clerk, and he has received and deposited it in the proper place. And so the soldier, under this bill, will not have voted when he has delivered his ballot to the person appointed to carry and deposit it at home. He will not have voted until that ballot has been carried to his election district in this State, and is there received and deposited in the proper place.

But we are told that this bill allows a soldier to vote by proxy. Not at all. The ballot cast is not constructively, but actually his

own. The agent who deposits it is a mere machine for that purpose. He has no more control over its contents than the recording instrument in a telegraph office has over the message sent.

We are told again that the Constitution, by implication, secures the right of challenge, and that a soldier voting in this manner could not be challenged. But this bill requires the soldier to make an affidavit to accompany his ballot, covering every possible subject of challenge, so that not one additional fact need be sworn to if he were present at the polls and there made his statement orally. Indeed, the plan here proposed is far superior to the usual practice. It makes a record about which there can be no mistake, and enables the authorities more easily to detect and punish perjury and illegal voting than can now be done.

Other minor objections to this bill have been urged, which I shall not stop to consider. Believing it to be entirely constitutional and eminently proper, I have a strong desire to see it pass. I might urge a still stronger reason. Our Democratic friends here tell us that this rebellion can never be put down and the country saved except by their party. They tell us that when they get the power, this consummation, so devoutly wished by us all, will be attained. They assure us also that two-thirds of these soldiers will vote the Democratic ticket. If our friends on the other side are not deceived in their premises and calculations, we can, by the passage of this bill, secure Democratic ascendancy next fall, scatter these Rebels to the four winds, and restore peace to this distracted land. Now, Sir, I am not willing to throw away or even peril such a glorious result by the defeat of this bill. If the end ever can sanctify the means, it will in this case.